

E-filed 9/29/06

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

CENTER FOR BIOLOGICAL
DIVERSITY, et al.,

Plaintiffs,
v.

Case No: 5:04-cv-4736-JF

BUREAU OF LAND MANAGEMENT, et al.,

**JOINT STIPULATION SETTLING
PLAINTIFFS' CLAIMS FOR
ATTORNEYS' FEES AND COSTS**

Defendants.

and

**SALINAS RAMBLERS MOTORCYCLE
CLUB, et al.,**

Defendant-Intervenor

Joint Stipulation Settling Pls' Claims for Attorneys' Fees and Costs

Civ. No. 5:04-cv-04736-JF

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STIPULATION OF DISMISSAL

WHEREAS Plaintiffs, Center for Biological Diversity and California Native Plant Society commenced this action on November 9, 2004, alleging two claims for relief for violations of the Endangered Species Act in a Complaint (Dkt. #1, 15);

WHEREAS Defendant-Intervenors, Salinas Ramblers Motorcycle Club, et al., were granted limited intervention status by order of the Court on February 25, 2005 (Dkt. #29);

WHEREAS Plaintiffs filed a Motion for Summary Judgment on March 28, 2005, Defendants filed a Cross-Motion for Summary Judgment and Opposition on April 29, 2005, and the Court issued an Order on July 15, 2005, deferring ruling on the motions for summary judgment;

WHEREAS the U.S. Fish and Wildlife Service issued a Biological Opinion evaluating the effect of BLM's management of the CCMA on the evening-primrose and Plaintiffs sought leave to file a Supplemental Complaint raising a third claim for relief (Dkt. #90) on September 16, 2005;

WHEREAS on October 4, 2005, the Court dismissed Plaintiffs' first claim for relief as moot, determined that Plaintiffs' second claim was not yet ripe for determination, and granted Plaintiffs leave to file the Supplemental Complaint and ordered that the Supplemental Complaint be deemed filed (Dkt. #100);

WHEREAS Defendants subsequently issued a Record of Decision for the Clear Creek Management Area Resource Management Plan Amendment and Route Designation on February 22, 2006, and the Court issued an Order on February 24, 2006, continuing the hearing on the cross-motions to August 25, 2006, and requiring BLM to issue a status report summarizing how it has implemented the 2006 ROD by June 30, 2006;

WHEREAS Defendants filed a Status Report regarding the 2005-2006 Use Season as required by the February 24, 2006 Court Order on June 28, 2006;

WHEREAS on August 3, 2006, the Parties stipulated and the Court approved the dismissal with prejudice of Plaintiffs' second claim set forth in Plaintiffs' Complaint (Dkt. # 1, 15) and the dismissal without prejudice of Plaintiffs' third claim as set forth in Plaintiffs' Supplemental Complaint (Dkt. #90, 100);

NOW, THEREFORE, the Parties hereby Stipulate and Agree as follows:

1. Defendants agree to settle all of Plaintiffs' claims for costs and attorneys' fees in the above-captioned litigation for a total of \$145,000.00. A check will be made payable in that amount to Michael Graf, Law Offices, 227 Behrens Street, El Cerrito, California 94530.

2. Defendants agree to submit all necessary paperwork to the Department of the Treasury's Judgment Fund Office pursuant to 16 U.S.C. § 1540(g)(4) within ten (10) business days of receipt of the signed court order approving this Stipulation;

3. Plaintiffs agree to accept payment of \$145,000.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiffs are entitled in the above-captioned litigation, through and including the date of this agreement;

4. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter;

5. By this agreement, Defendants do not waive any right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any future litigation. Further, this stipulation as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

Dated: September 22, 2006

Respectfully submitted,

SUE ELLEN WOOLDRIDGE, Asst. Attorney General
United States Department of Justice
Environment and Natural Resources Division
JEAN E. WILLIAMS, Chief
LISA L. RUSSELL, Assistant Chief

/s/ Michael R. Eitel
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Attorneys for Federal Defendants

Dated: September 22, 2006

Respectfully Submitted,

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7 Attorneys for Plaintiffs

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10 PURSUANT TO STIPULATION, IT IS SO ORDERED,

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12 Dated: 9/29/06



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16 United States District Judge